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police power and that the act is uniform inasmuch as it affects all members of the same class alike. *Christy v. Elliot* (supra).

In some statutes it is provided that the rule as to registration, etc., shall not apply to a person manufacturing or dealing in automobiles or motor vehicles, except those for his own private use. In such cases it is contended that such provisions exclude the dealer and manufacturer from the operation of the statute, and that, therefore, the law is unconstitutional, it being class legislation. The courts hold such not to be the case. They hold that the statute is uniform as it applies to all vehicles used upon the public highway, for private use or for hire, and does not apply to machines while they are kept in stock for sale and not so used. *Commonwealth v. Densmore*, 29 Pa. Co. Ct. Rep. 217; *People v. MacWilliams* (supra).

Nor is the general act invalid because it fails to provide for taxing the vehicles of non-residents who habitually use the streets of the city. *Kersey v. City of Terre Haute*, 161 Ind. 471.

It is objected that the legislature by giving a municipality power to regulate, does not thereby give it power to license. The court holds that "the grant of authority to accomplish a certain purpose carries with it authority to use any proper and lawful means without which that purpose cannot be accomplished," and as the speed of automobiles cannot otherwise be regulated, such power to license was necessarily granted with the power to regulate. *People v. Schneider* (supra).

Nor is the license fee a tax, placing a double burden of taxation upon the owner, and therefore rendering the act unconstitutional. *Unwen v. State*, 64 Atl. (N. J.) 163; *Commonwealth v. Boyd* (supra); but see *City of Chicago v. Collins*, 175 Ill. 442.

A rather peculiar objection to the statute regulating speed is that speed means action, and is directly opposed to stopping, which is inaction. And the stopping a machine does not come within the meaning of regulation of its speed. The court held, however, that regulating the stopping of a machine was auxiliary to the object of regulating the speed, and that the act was not void as embracing more than the one subject expressed in the title. *Christy v. Elliot* (supra.)

CONSTITUTIONAL LAW—POLICE POWER—SLEEPING CARS

One more instance of our modern haphazard legislation, which is the result of acceding to the clamor of special interests without careful study of the whole situation, is found in the recent Wisconsin statute declared unconstitutional in the case of *State v. Redmon*, 114 N. W. (Wis.) 137. This statute was entitled, "An act—relating to the health and comfort of occupants of sleeping car berths;" and provided that whenever a person paid for the use of a double lower berth in a sleeping car, he should have the right to direct whether the upper berth should be left open or closed unless the upper berth was actually occupied by some other person; and the proprietor of the car and the person in charge of it should comply with such direction.

As liberty and property are so carefully protected by express provisions in our constitutions, it is natural that most of the attacks on these rights should be made under the guise of an exercise of the state's police power. This is because of the fact that our courts have ever held to the doctrine that the police power is so obviously essential to the public welfare that it is presumed that the framers of our constitutions did not intend to prohibit its exercise where reasonably necessary therefor, though such exercise might invade the scope, viewing the language in the literal sense, of some of the fundamental prohibitions protecting liberty and property. *Munn v. Illinois*, 94 U. S. 113; *People v. Ewer*, 141 N. Y. 129; *Lochner v. New York*, 198 U. S. 54. Here then was a loop hole in the constitution for the exponents of class legislation. As a result the police power has been stretched so far at times that it has been wittily defined as the power to pass unconstitutional laws.

No doubt the reason why the exercise of the police power has been so persistently abused is because the courts in defining it have fixed its limits in variable terms or else have admitted, as did Judge Brewer in *State v. Kansas City, etc., R. Co.*, 32 Fed. Rep. 723, "that no one knows its limits." Such must necessarily be the case from its very nature. The police power is not a fixed quantity because it is the expression of social, economic, and political conditions which are ever changing with the times. Yet no one denies that it has limits. In the first place we begin with the proposition that under its police power the state can legislate to promote the public health, safety, morals, and general welfare; and furthermore that when such legislation interferes with an individual's liberty and property, the federal constitution offers no protection. But thus broadly stated, the principle would be broad enough to include almost any legislation. Therefore we find the courts attempting to hedge this power about with various limitations. In doing this they have recognized the fact that to curb the police power by fixed or rigid rules would be to destroy its very purpose and future usefulness. Therefore the limits have been fixed in such general and variable terms as: "that its purpose must affect the *public generally*;" and "that the means used are *reasonably necessary* for the accomplishment of the purpose and not *unduly oppressive* upon individuals." What then is meant by these terms, "public generally," "reasonably necessary," and "unduly oppressive?" It is impossible to exactly define them. At most our courts have merely given us a mass of individual decisions applying these variable tests to the facts in each individual case.

Thus the Supreme Court of Wisconsin in determining the unconstitutionality of this statute regulating the use of sleeping car berths has given us another illustrative case as to the limits of the state's police power. In the title of the act the legislature expressly stated that its purpose was to "promote health." But the court held that though such a statement in the title of an act was evidence of its real purpose yet such was not conclusive because it is a judicial function to define the proper sub-

jects for the exercise of police power. Although this doctrine has been repeatedly reaffirmed since so clearly enunciated by Chief Justice Marshall in *Marbury v. Madison*, 1 Cranch (U. S.), 178, yet social and class legislation is continuously appearing headed with titles declaring its purpose to be to promote the public health.

In considering whether or not the statute under consideration was one which affected the public generally, the court decided that it was not because it gave the person to be benefited an option. He could have the upper berth thrown back or not at pleasure. The court was clearly right here because it is contrary to the whole theory of the exercise of the police power in protection of health, that the recipient of the intended benefit should receive it or not as he wishes. Imagine a statute forbidding factory owners from employing women more than ten hours a day unless such women wished to work that long. It is absurd. The benefit is not intended to accrue to the individual as such but to the public at large through the individual. *In re Jacobs*, 98 N. Y. 98; *Holden v. Hardy*, 169 U. S. 366.

The court furthermore decided that even though such a statute did promote to some degree the public health, yet the benefit obtained thereby was very slight in proportion to the restraint and requirement imposed upon the owners of sleeping cars. Therefore the law was an unwarranted interference with property rights. In reaching this conclusion the court applied the recognized test of "reasonableness." In fact this word, "reasonableness," is the keystone of the whole doctrine of police power. The final question asked by our courts about any police power legislation is as to whether or not it is reasonable. *Bessette v. People*, 193 Ill. 334; *Health Department v. Rector*, 145 N. Y. 32; *Minneapolis, etc. Ry. Co. v. Minnesota*, 186 U. S. 268; *Southern Ry. Co. v. McNeil*, 155 Fed. 756. But what is unreasonable at one time may be reasonable at another. Circumstances change and public opinion, which must eventually find expression in the opinions of our judges, also changes. Hence the law of police power is variable and yields to the changing conditions of society. We see greater power in this respect readily conceded to the most democratic of governments to-day than despotic governments would have dared to claim in former times.

This great broadening of the scope of the state's police power in recent years has been a convenient cloak under which to rush through our state legislatures much poorly considered and unduly oppressive class legislation. The Wisconsin case under discussion is one more authority to help stem this tide of impulsive and ill-conceived legislation.

EFFECT OF FAILURE OF FOREIGN CORPORATION TO COMPLY WITH STATUTORY REQUIREMENTS

Can a foreign corporation, which has not complied with the requirements of the statutes of another state, recover from an agent in that state on his promissory note? The Supreme Court